



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MLL/172760

PRELIMINARY RECITALS

Pursuant to a petition filed March 10, 2016, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on April 19, 2016, at Waukesha, Wisconsin.

The issue for determination is whether I have jurisdiction to decide an estate recovery claim issue when the petitioner is still living and no estate recovery claim has been filed.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

█
█

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]

Division of Health Care Access and Accountability

Madison, WI

ADMINISTRATIVE LAW JUDGE:

Corinne Balter

Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Waukesha County.
2. The petitioner applied and received services through the family care program. The application for this program states "Estate Recovery." "[T]he Wisconsin Medicaid program requires the recovery of certain Medicaid benefits from your estate.

3. After receiving services through the Family Care Program for several months, the petitioner's son learned that her estate could potentially have to repay those costs through the estate recovery program. The family then terminated the petitioner's Family Care coverage.
4. The petitioner is still living.
5. On March 30, 2016 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

DISCUSSION

There is a \$2,000 asset limit for medical assistance. *Medicaid Eligibility Handbook (MEH)*, App. 39.4.1. Certain assets including a home are except from this asset limit. *MEH*, App. 16.8.1. However, if a person dies, and an estate and assets remain, even if those assets were exempt when determining eligibility, Wisconsin law requires the department to file a claim against the estate for the amount the State paid in medical assistance. Wis. Stat. § 49.496(3). There are exceptions to this rule, and the Department can waive this requirement if the claim would create a hardship for the heir. Wis. Stat. § 49.496(6m).

In this case the petitioner is still living. She does not have an estate. She still owns her home, which is paid for, and was an exempt asset. The State has not filed a Medical Recovery Claim because there is no estate to recover from. The petitioner's son argues that he did not know about this Estate Recovery mechanism, and had they known, they would have never received services through the Family Care Program. The Family Care Program is paid a monthly amount for each recipient. The level or cost of services that a recipient receives is immaterial in determining the amount that the State pays the Family Care Providers. The petitioner's son believes that the services his mother received were valued at far less than the monthly capitation rate that the State pays, which is approximately \$3,600.

Although I understand the petitioner's son's argument, I have no jurisdiction to address these issues. The petitioner is still living. Nobody knows whether she will have an estate when she passes away. She could get sick, and have to go into a nursing home, which would force her to eventually sell her house, and deplete that money. If there is an estate recovery, the Department testified that they would only recover the actual amount that they paid. The amount listed on the exhibits may be slightly higher than the amount paid, however, they would review all of the numbers and calculations when and if they file an estate recovery claim.

I further note that I have no jurisdiction to set or change the amount the State pays to Family Care providers. This is a set amount determined by contracts between the State and the providers.

Finally, I have no jurisdiction over what the aging and disability resource center in Waukesha County tells recipients. The application has the language about the possibility of estate recovery. The petitioner's son testified that he was not given that portion of the application. There is no verification of this, and I have no jurisdiction. The statutes allow for estate recovery. If and when there is an estate recovery filed, the petitioner may file an appeal to dispute that recovery.

CONCLUSIONS OF LAW

I do not have jurisdiction to decide an estate recovery claim issue when the petitioner is still living and no estate recovery claim has been filed.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 5th day of May, 2016

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on May 5, 2016.

Division of Health Care Access and Accountability